

Hon. Timothy W. Dore
In Proceedings Under
Chapter 7
Hearing Date: April 23, 2021
Time: 9:30 AM
Response Date: April 16, 2021
Location: Telephonic

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

Beverly Jane Cary,

Debtor(s),

Case No: 20-12450 TWD

DEBTOR(S)' REPLY TO TRUSTEE'S
RESPONSE TO DEBTOR'S MOTION TO
CONVERT CASE UNDER CHAPTER 7 TO
CASE UNDER CHAPTER 13

REPLY

Counsel for Debtor has prosecuted conversions in the past with both with an order to vacate an entered order of discharge, and without; in each case the motions to convert were accepted unopposed and ordered.

The code and case law is unclear and there have been decisions both allowing order vacating the discharge and those not requiring vacation. However, as Judge Keith M. Lundin notes, "It seems unlikely that Congress intended conversion as a technique for debtors to avoid both liquidation in the Chapter 7 case and the payment of prepetition debts in the Chapter 13 case. If claims discharged in the Chapter 7 case are

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CHAPTER 7 TO CASE UNDER CHAPTER 13 -- 1

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1 disallowed in the Chapter 13 case after conversion, creditors would be both precluded
2 from sharing in the Chapter 7 estate and disallowed to receive distributions in the
3 Chapter 13 case. The courts are not likely to go there.” Keith M. Lundin, Lundin on
4 Chapter 13 §148.3, at ¶ 14, LundinOnChapter 13.com (last visited March 19, 2021).

5 While controlling law was not sourced in the 9th circuit, some rulings by
6 other courts include:

7 Bankruptcy courts that have held conversion after discharge the debts scheduled
8 in the Chapter 7 case would not be entitled to distributions through the Chapter 13 plan:

9 To permit a discharged debtor to convert his Chapter 7 case to a Chapter 13 case
10 is ludicrous as Debtor no longer has any meaningful debts to repay pursuant to a
11 Chapter 13 plan. His discharged creditors no longer have any right to either
12 receive payment or object to confirmation of any plan proposed by the
13 debtor. . . . [O]nce the Chapter 7 discharge has been granted, the Debtor’s
14 personal liability is extinguished thus rendering the conversion meaningless,
15 except as to those creditors holding non-dischargeable claims.
16 *In re Marcakis*, 254 B.R. 77, 82–83 (Bankr. E.D.N.Y. 2000).

17 Other bankruptcy courts have held the opposite, that a discharge in a Chapter 7,
18 within the same case does not prohibit the filing of claims and distribution of the same
19 in a conversion to a Chapter 13:

20 [T]he argument that once a discharge has been issued there are no debts for a plan
21 to pay cannot be supported by a close reading of the Bankruptcy Code. The effect
22 of a discharge is to prohibit collection of the discharged debt as a personal
23 liability of the debtor. § 524(a) It does not, however, affect the liability of
any other person or entity for the debt. § 524(e) In particular, nothing in the
Code suggests that a discharge eliminates the creditor’s claim against the
bankruptcy estate. . . . The bankruptcy estate comes into existence upon “the
commencement of [the] case.” § 541(a) Claims against the estate, if

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1 objected to, are determined “as of the date of the filing of the [bankruptcy]
2 petition.” § 502(b) The conversion of the case does not change the date of the
3 commencement of the case or the date of the filing of the petition. § 348(a) . . .
4 . Thus creditors with valid claims against the bankruptcy estate on the date the
5 bankruptcy petition is filed do not lose them simply because the debtor is granted
6 a discharge or the case is converted to another chapter.¹

7 *In re Mosby*, 244 B.R. 79, 87 (Bankr. E.D. Va. 2000)

8 Debtor has no preference here because the result would be the same. She will
9 submit either the order of conversion as proposed, or amended to include language
10 vacating the Chapter 7 discharge as directed.

11 DATED: April 15, 2021

12 /S/ Mark C McClure

13 Mark C. McClure, WSBA # 24393
14 Attorney for Debtor(s)

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17 ¹ Accord *In re Carter*, 285 B.R. 61, 68–69 (Bankr. N.D. Ga. 2002) (At conversion to Chapter 13 after discharge in a
18 Chapter 7 case, creditors still have claims against the Chapter 13 estate. “[C]reditor claims are not extinguished by the
19 granting of a Chapter 7 discharge and can still be enforced against the property of the debtor’s bankruptcy
20 estate. . . . [T]here is no specific bar within the Code to prohibit creditors’ claims from being paid through a Chapter 13
21 plan, notwithstanding the fact that the debtor’s personal liability for those claims has been extinguished.”); *In re*
22 *Agresta*, No. 5-97-01568, 2000 WL 1639570, at *2 (Bankr. M.D. Pa. May 24, 2000) (unpublished) (At conversion to
23 Chapter 13 after discharge in the Chapter 7 case, claims that existed at the filing of the Chapter 7 petition must be
addressed through the Chapter 13 plan because only the debtor’s personal liability was discharged in the Chapter 7
case. “The fact that the Debtor received a discharge under Chapter 7 and later converted to Chapter 13 does not harm
the creditors. The Debtor’s conversion to Chapter 13 would relate to May 29, 1997, the original date of filing under
Chapter 7. This original date of filing is also the measuring point for creditor’s [sic] proof of claims. While the
chapter 7 discharge extinguished the Debtor’s personal liability towards the creditors, it does not cancel the claim. The
claim is still pending to be addressed under the Chapter 13 Plan.”).

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